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In re Application of:	:	
WONG, et al.	:	
U.S. Application No.: 10/539,924	:	DECISION ON PETITION TO
PCT No.: PCT/CN03/01054	:	CORRECT FILING DATE AND
International Filing Date: 10 December 2003	:	REQUEST TO CORRECT
Priority Date: 18 December 2002	:	INVENTOR'S NAME
Attorney Docket No.: EAGIP2.002APC	:	
For: BIOLOGICALLY ACTIVE PEPTIDE	:	
CONJUGATES	:	

This decision is issued in response to: (1) the "Petition To Accord Application Filing Date As Of Date The Correspondence Was Deposited With The USPS" filed 30 January 2006; and (2) the 30 January 2006 filing of a declaration in which the name of the second inventor differs from that set forth in the international application, treated herein as a request to correct a transliteration error in the inventor's name. No petition fee is required.

BACKGROUND

On 10 December 2003, applicants filed international application PCT/CN03/01054. The application claimed a priority date of 18 December 2002 and designated the United States. On 01 July 2004, the International Bureau (IB) communicated a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO). The published international application listed two inventors for the purposes of the United States: Waiming WONG and Gang LIN.

The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 18 June 2005.

In June 2005, applicant filed via "Express Mail" a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee. The USPTO assigned the submission a filing date of 18 June 2005, corresponding to the "date in" on the "Express Mail" envelope used to file the application materials.

On 27 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date. The Notification Of Missing

Requirements identified the filing date for the materials filed to initiate the national stage application as 18 June 2005.

On 30 January 2006, applicants filed a response to the Notification Of Missing Requirements (Deposit Account No. 11-1410 will be charged the required one-month extension fee). Applicants' response includes the required surcharge payment, an executed declaration in which the name of the second inventor is listed as Kong LAM (the second inventor on the international application was identified as Gang LIN), a statement from Kong LAM regarding the disparity in his name (treated below as a request to correct the inventor's name of record), and a petition to correct the filing date accorded to the application.

On 27 February 2006, the DO/EO/US mailed another Notification Of Missing Requirements (Form PCT/DO/EO/905), again requiring submission of an oath or declaration and the surcharge payment. This duplicative Notification Of Missing Requirements appears to have been mailed in error and is hereby vacated.

DISCUSSION

1. Request To Correct The Second Inventor's Name:

Section 605.04(b) of the Manual of Patent Examining Procedure states that, where a typographical or transliteration error in the spelling of an inventor's name is discovered, a petition is not required, nor is a new oath or declaration needed. Here, applicants' 30 January 2006 submission includes a statement from the second inventor (identified as Gang LIN in the international application and as Kong LAM on the declaration filed 30 January 2006). The inventor states that Gang LIN and Kong LAM are "merely different transliterations" of the Chinese form of the inventor's name (one derived from the Mandarin version of the inventor's name, the other from the Cantonese version).

Based on the inventor's statement, the correct name for the second inventor is accepted as Kong LAM, as set forth in the declaration filed 30 January 2006.

2. Petition To Correct Filing Date Accorded To The Application:

As noted above, applicants assert that the materials filed to initiate the present national stage application were deposited with the USPS as "Express Mail" on 17 June 2005 and that the USPS entered the handwritten "date in" of 18 June 2005 in error.

37 CFR 1.10(d) states the following:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied all the requirements for a grantable petition. With respect to the showing required under item (3), applicant has provided a copy of the "Express Mail" customer receipt that bears, in addition to the handwritten "date in" of 18 June 2005, a USPS stamp dated 17 June 2005. Applicant has also provided a copy of a USPS Form 3877 docket list that includes the original docket number for the present case and also bears a USPS stamp dated 17 June 2005. In addition, the USPS tracking database indicates that this envelope was "en route" with the USPS on 17 June 2005. These materials provide an adequate showing that the materials initiating this national stage application were deposited with the USPS as "Express Mail" on 17 June 2005. These materials will therefore properly accorded a filing date of 17 June 2005

It is noted that, with respect to a national stage application, "[f]or most legal purposes, the filing date is the PCT international filing date" (see MPEP section 1893.03(b)). In addition, the date that will be identified as the 371(c) date on the filing receipt and the Notification Of Acceptance (Form PCT/DO/EO/903) is the date on which the requirements under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) are completed. In this case, the 35 U.S.C. 371(c) date is 30 January 2006, the date on which the executed declaration was filed, not the date on which the original national stage materials were submitted (i.e., 17 June 2005).

CONCLUSION

Applicants' request to correct the inventor's name is **GRANTED**.

The name of record for the second inventor is accepted as Kong LAM, as set forth in the declaration filed 30 January 2006. Based on the correction of the inventor's name, the declaration filed on 30 January 2006 is acceptable under 37 CFR 1.497.

The duplicative Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 27 February 2006 is hereby **VACATED**.

Applicants' petition under 37 CFR 1.10(d) is **GRANTED**. The correspondence initiating the present international application, including the basic national fee, will be accorded a filing date of 17 June 2005.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including correcting USPTO records to identify the filing date of the basic national fee and accompanying materials to 17 June 2005. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 30 January 2006.



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